

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WAYNE A. JOHNAKIN,	:	CIVIL ACTION NO. 1:CV-11-0157
	:	
Petitioner	:	(Judge Caldwell)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
JOSEPH P. NISH, Superintendent, et al.,	:	
	:	
Respondents	:	

REPORT AND RECOMMENDATION

Wayne A. Johnakin, an inmate at the State Correctional Institution at Waymart, Pennsylvania, filed, *pro se*, a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on January 24, 2011.¹ (Doc. 1). Petitioner also filed a Memorandum of Law in support of his Petition (Doc. 2), and a Motion for Leave to Proceed *in forma pauperis*. (Doc. 4).

A 28 U.S.C. §2254 petition may be brought in the federal judicial district in which the state court of the conviction is located and, when the prisoner is confined in a prison located in another federal district in the same state as the state of conviction, the petition may be brought in the district of confinement. The district court for the district in which the petition is filed may transfer the petition to the district court for the district of the conviction when to do so is in the interests of justice. 28 U.S.C. §2241(d).

¹On March 18, 2010, Petitioner Johnakin filed a § 1983 civil rights action with this Court attacking his 1978 conviction and sentence in the Philadelphia County Court of Common Pleas. See Civil No. 10-0604, M.D. Pa. On April 30, 2010, the Court dismissed Petitioner's civil rights action.

Petitioner is challenging his 1978 conviction for involuntary deviate sexual intercourse and possession of a weapon, as well as his November 27, 1978 prison sentence of 22 ½- to 45-years imposed in the Philadelphia County Court of Common Pleas, Philadelphia, Pennsylvania. (Doc. 1, p. 2). Petitioner claims that the sentencing judge (Judge Braig) was corrupt, in that he was under federal investigation which ultimately resulted in his conviction on federal corruption charges in 1989. Petitioner further asserts that former Pennsylvania Governor Ed Rendell, the District Attorney of Philadelphia at the time of Petitioner's conviction, reviewed all cases of all convicted judges, and while some of those cases were given new trials and some were dismissed, Petitioner's case was left undisturbed. (Doc. 1, pp. 3-4).²

The Petitioner is currently a prisoner at the State Correctional Institution at Waymart, Pennsylvania, which is in the Middle District of Pennsylvania. He is challenging his 1978 conviction and sentence in Philadelphia County, Pennsylvania, which is in the Eastern District of Pennsylvania. All records of conviction, transcripts of proceedings, witnesses, and counsel are located within the Eastern District of Pennsylvania. We also note that the captions of all the documents filed by Petitioner in this case indicate "In the United States District Court for the Eastern District of Pennsylvania." (See p. 1 of Docs. 2, and 4). We construe Petitioner's filings to reflect his desire that his habeas petition proceed in the Eastern District of Pennsylvania.

²Petitioner's habeas claims are essentially the same claims he raised in his § 1983 action.

It will be in the interests of justice to transfer this petition to the United States District Court for the Eastern District of Pennsylvania. All of the conduct giving rise to Petitioner Johnakin's habeas claims, as well as his challenged state court conviction and sentence, occurred in the Eastern District of Pennsylvania.

Based on the foregoing, it is respectfully recommended that this case be transferred to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §2241(d). See *Reinhold v. Rozum*, 2007 WL 4248273 (M.D. Pa.); *Wright v. Tennis*, 2007 WL121855 (M.D. Pa.); *Wright v. Diguglielmo*, 2007 WL 1437491 (E.D. Pa.); *Morales v. Palakovich*, Civil No. 10-0036, M.D. Pa., 2-9-10 Order, J. Kosik (§ 2254 Habeas Petition of inmate confined in Middle District of Pennsylvania challenging his Lancaster County, Pennsylvania, conviction and sentence was transferred to the Eastern District of Pennsylvania).

s/ Thomas M. Blewitt
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: January 26, 2011

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	:	
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NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing
Report and Recommendation dated **January 26, 2011**.

Any party may obtain a review of the Report and Recommendation pursuant to
Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the

magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

s/ Thomas M. Blewitt
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: January 26, 2011